

1 **MINUTES OF THE COTTONWOOD HEIGHTS CITY**
2 **BOARD OF ADJUSTMENT MEETING**

3
4 **Thursday, August 30, 2007**
5 **7:00 p.m.**
6 **Cottonwood Heights City Council Room**
7 **1265 East Fort Union Boulevard, Suite 250**
8

9
10 ***ATTENDANCE***

11
12 **Board Members:**

13
14 James Holtkamp, Chairman
15 Paul Thronsdon
16 Debbie Tyler
17 Noor Ul-Hasan
18 Bob Wilde
19 James Adinaro, Alternate
20 Robert Good, Alternate
21

12 **City Staff:**

13
14 Michael Black, Planning Director
15 Glenn Symes, Associate Planner
16 Shane Topham, City Attorney
17 Sherry McConkey, Planning Coordinator
18

19
20
21
22 **REGULAR MEETING**

23
24 Chairman James Holtkamp called the meeting to order at 7:00 p.m.
25

26 **1. Public Comment.**

27
28 (19:00:00) Marie Breinholt asked about a proposed “million-dollar” dog park. Planning
29 Director, Michael Black, reported that there was a dog park planned but explained that the Board
30 of Adjustment would not be dealing with that issue. He suggested Mrs. Breinholt contact
31 Deputy City Manager, Kevin Smith, directly or attend a City Council Meeting. Any money for
32 the proposed park would have to be allocated by the City Council.
33

34 **2. Public Hearing – Variance Request – Ed Godlewski.**

35
36 The above matter was not discussed.
37

38 **3. Withdrawn – Variance Request – American First Credit Union.**

39
40 The above item was withdrawn from the agenda.
41

42 **4. Appeal of A Planning Commission Decision – Tom Taylor, Appellant – Short-Term**
43 **Rental File #P-06-051 – 8956 South Wasatch Blvd.**
44

45 Chair Holtkamp explained that the Board was an appellate body hearing an appeal of a decision
46 of the Planning Commission. By State law and City ordinance, their role was to make a decision

1 as to whether or not the Planning Commission decision was correct. In doing that, by law they
2 were restricted to the record developed by the Planning Commission. They would hear
3 discussion by representatives of the parties about whether or not the decision of the Planning
4 Commission was appropriate. They would look at whether the decision of the Planning
5 Commission was supported by a record, whether it was arbitrary or capricious, whether the
6 Planning Commission abused any discretion they had, or whether the decision violated a legal
7 requirement or the law. He remarked that the Board served in a judicial capacity. Accordingly,
8 there would be procedures to be followed. First, he urged those present to not have any audible
9 or visible displays of opinion. The representatives of the interested parties would be allowed to
10 make an argument. Staff would similarly be allowed to present their observations and report.
11 Once done, the Board would discuss the matter in the open meeting. During the presentations,
12 any Board Member was welcome to ask questions.

13
14 Chair Holtkamp stated that the Board's options tonight were to either make a decision or take the
15 matter under advisement and consider a written decision to approve or deny. The Board could
16 decide to reverse the Planning Commission decision, send it back to the Planning Commission to
17 review again, or affirm the Planning Commission's decision. The District Court would be
18 further recourse of the Board's decision. For that reason, the Board would be very careful about
19 the procedures followed and make sure the record is as complete as possible.

20
21 (19:06:11) Chair Holtkamp stated that the appeals would be heard sequentially even though they
22 were related. In the case involving the short-term rental on Wasatch Boulevard, the Planning
23 Commission granted the application of the property owner, which was appealed by Tom Taylor.
24 Staff would begin by presenting a staff report. Mr. Taylor had 10 minutes to make a
25 presentation. 10 minutes would then be allowed for those who oppose the appeal to express their
26 opinions. A rebuttal period of 3 minutes would then be provided for each of the parties.

27
28 Mr. Black discussed both short-term rental issues listed on the agenda since they were
29 intermingled. Both of the short-term rentals were owned by Heidi and Dave Staples. Staff
30 believed the Staples' home located on Wasatch Boulevard had been used as an unlicensed short-
31 term rental since before the City incorporated. It was geared toward larger crowds of up to 20
32 people. The Creek Road home apparently was a new acquisition and had not yet been used as a
33 short-term rental.

34
35 (19:10:27) Mr. Black stated that on December 18, 2006, the Staples submitted a short-term rental
36 application for the Wasatch Boulevard home. It showed that the home contained eight
37 bedrooms. Consideration of the application was placed on the Commission's January 3, 2007,
38 agenda but was continued due to the Staples' non-compliance with the short-term rental
39 ordinances. The matter was continued until the Commission's May 16, 2007 meeting at which
40 time a public hearing was held. Issues from that meeting led the Commission to continue the
41 matter until its next meeting, which was held on June 6, 2007. That gave staff time to evaluate
42 the issues. At the June 6 meeting the Commission voted unanimously to grant the request for a
43 short-term rental permit but imposed certain conditions on the approval including that the
44 applicant use only four of the eight bedrooms identified on the application.

1 With regard to the Creek Road home, on May 8, 2007, the Staples submitted a second short-term
2 rental application that showed that the house contained seven bedrooms. Consideration of the
3 application was placed on the Commission's June 20 agenda. Following the public hearing, the
4 Planning Commission voted unanimously to deny the application because it showed that the
5 home had seven bedrooms. The Commission's June 6 decision was appealed by Tom Taylor
6 who was opposed to short-term rental facilities in the R-1 or single-family zones. The
7 Commission's June 20 decision denying the Creek Road short-term rental was appealed by the
8 homeowners. The appellants argued that the June 6 and June 20 decisions conflicted with one
9 another because on June 6 the Commission approved the short-term rental permit application that
10 stated that the house contained eight bedrooms although approval was conditional on use of only
11 four of those bedrooms. On June 20 the Commission denied outright a short-term rental permit
12 application stating that the house contained seven bedrooms. Mr. Black reported that the City's
13 principal short-term rental ordinance was adopted in November 2005. The Council worked
14 diligently on it for a very long with Kevin Smith who was the Community Development Director
15 at the time. Mr. Smith presently serves as the Deputy City Manager. The Planning Commission
16 explored numerous options for short-term rentals and decided to establish an ordinance that
17 narrowed the application of the ordinances in the R-1 zones and limited them to certain roads.
18 One of the roads was Wasatch Boulevard and another was Creek Road. The ordinance went into
19 effect in March of 2006 and was thought to be the only short-term rental ordinance on the books.
20

21 (19:13:52) Mr. Black explained that there was another short-term rental ordinance identified as
22 Chapter 19.76.320. He stated that a short-term rental could not contain more than four bedrooms
23 as stated in the zoning code contained in the supplementary and qualifying regulations. Because
24 no short-term rental permit applications were accepted or processed by the City from its
25 incorporation in January 2005 until Chapter 19.89 became effective in March 2006, the existence
26 of the additional limitations on short-term rentals under 19.76.320 may not have been clearly
27 recalled until just prior to the Planning Commission's June 6 decision on the Wasatch Boulevard
28 application. In the June 6 decision the Commission approved the Wasatch Boulevard application
29 conditioned upon the use of only four of the eight bedrooms in the house. At its June 20
30 meeting, however, the Commission denied the Creek Road application based on the applicant's
31 admission that the house contained seven bedrooms. The application was denied rather than
32 approved with the condition limiting the use of the rooms in the home.
33

34 Mr. Black stated that Chapter 19.89 allowed staff to administratively approve short-term rental
35 permits in the City's RM and R-2-8 zones meaning that only short-term rental permit
36 applications affecting properties in the City's R-1 zones must be approved by the Commission.
37 Between the effective date of the new Chapter 19.89 in March 2006 and the date of the Wasatch
38 Boulevard decision on June 6, 2007, staff approved approximately nine applications that
39 contained more than four bedrooms. The two short-term rental permit applications on appeal
40 were the only two that were approved by the Planning Commission that contained more than
41 four bedrooms. Since becoming aware of 19.76.320, limiting the number of bedrooms to four in
42 a short-term rental, staff sent out a letter to every short-term rental licensee in the City explaining
43 that there was a section in the code that is enforceable and in force limiting the number of
44 bedrooms in any short-term rental to four. In the letter staff also stated that compliance was
45 mandatory.
46

1 (19:17:32) Mr. Black remarked that under the City ordinance, the Commission granted a short-
2 term rental permit as a conditional use. Conditional use was defined in the Land Use
3 Development Management Act (LUDMA) in the State Code as a land use that because of its
4 unique characteristics or potential impact on municipalities, surrounding neighbors, or adjacent
5 land uses may not be compatible in some areas or may be compatible only if certain conditions
6 are required that mitigate or eliminate the detrimental impacts. Section 10.9a-507 of LUDMA
7 provided that:

8
9 1. The land use ordinance may include conditional uses and provisions for conditional uses
10 that require compliance with standards set forth in the applicable ordinances.

11
12 a. A conditional use shall be approved if reasonable conditions are proposed or can
13 be imposed to mitigate the reasonably anticipated detrimental effects of the
14 proposed use in accordance with the applicable standards.

15
16 b. If reasonably anticipated detrimental effects of a proposed conditional use cannot
17 be substantially mitigated by the proposal or the imposition of reasonable
18 conditions to achieve compliance with applicable standards, the conditional use
19 may be denied.
20

21 Mr. Black explained that the appeal of the Planning Commission's decision was reviewed on the
22 basis of the record. To determine whether or not the decision is supported by substantial
23 evidence in the record and, therefore, not so unreasonable as to be arbitrary or capricious, new
24 issues may not be raised on appeal.
25

26 (19:19:30) Tom Taylor was present on behalf of numerous City residents who were involved in
27 the appeal. He believed the issue was whether granting the conditional use permit was consistent
28 and proper under 19.76.320(b). He thought it clearly was not appropriate. The language was
29 clear and unambiguous in stating that a short-term rental shall *not contain* more than four
30 bedrooms. He believed staff misinterpreted the language and a mistake had been made for the
31 last 2 ½ years in the interpretation and application of the statute. Many of the short-term rental
32 permits were granted with the conditional language that they shall not *use or make available*
33 more than four bedrooms. He clarified that 320b was absolutely clear. Because of the mistakes
34 made, the Planning Commission had granted several permits to properties that contain more than
35 four bedrooms. He contended that the property in question had been out of compliance since the
36 beginning. Interestingly, on June 6 before the Planning Commission, Chairman J. Thomas
37 Bowen raised the issue to the Staples and their counsel, Mr. Barfuss, about whether they were
38 aware of the four-bedroom rule. The applicants responded that they were aware of it. During
39 the entire six-month period, the home had been advertised on the Staples' website as an eight-
40 bedroom unit that accommodates 20 people.
41

42 In the application, the applicants listed the property as containing eight bedrooms as they did on
43 their website. In the May 16 minutes, the applicants indicated that it had seven bedrooms when
44 they purchased it. A storage unit was converted to another bedroom resulting in eight. The MLS
45 listing of the property at the time it was purchased indicated it had five bedrooms. Their January
46 4 letter indicated that it had eight bedrooms. Mike Dolan, the City's Code Enforcement Officer,

1 inspected the property and wrote a report on April 10. He indicated that the property had eight
2 bedrooms. Mr. Taylor stated that it was clear that the home contained more than four bedrooms.

3
4 (19:24:22) Mr. Taylor addressed a couple of issues raised by Mr. Barfuss in his May 29 letter to
5 the Planning Commission. He stated that the ordinances were designed to mitigate the
6 detrimental effects of short-term rental properties on neighboring owners. The problem,
7 however, was that they don't comply with 320b because they have more than four bedrooms.
8 Mr. Barfuss' letter stated that a municipality's land use decision may be overturned if it is
9 deemed to be arbitrary, capricious, or illegal. Mr. Taylor believed that if the decision was not
10 overturned it would be illegal because it clearly violates 320b. Mr. Barfuss' letter also indicated
11 that the Staples had complied with all applicable ordinances governing short-term rental
12 properties. Mr. Taylor did not consider that to be a true statement and explained that 320b was
13 clearly not complied with in this case.

14
15 In conclusion, Mr. Taylor emphasized the letter sent out by the City on August 21 indicating that
16 320b is an enforceable ordinance that is mandatory and cannot be waived. Board Member Wilde
17 asked for the definition of a bedroom. Mr. Taylor responded that the new ordinance being
18 drafted to deal with short-term rental properties addressed that in detail. There was no definition
19 in the current statute about what a bedroom is, however, the introductory paragraph to 19.04
20 states that when there is a term used but not defined in the ordinance, Webster's Dictionary
21 should be referred to. The dictionary defines a bedroom as a place where people sleep or the
22 area alongside a bed.

23
24 (19:27:03) It was clear to Board Member Wilde from reading the notes from the Planning
25 Commission Meeting that they were dealing with the spirit of the ordinance. He asked why the
26 Board should not defer to that. Mr. Taylor responded that 320b was absolutely clear and the
27 spirit was that they not contain more than four bedrooms, which was what the Planning
28 Commission based their decision on. He stated that the ordinance was clear and the property
29 undoubtedly had more than four bedrooms. Mr. Taylor stated that most likely if someone had
30 eight bedrooms they would not limit themselves to four. Board Member Wilde asked if there
31 was a method by which the City's code enforcement could deal with the situation. Mr. Taylor
32 stated that they could, but the reality was that that had not happened. There had been numerous
33 complaints and he personally had made many. The City's Code Enforcement Officer was
34 overworked and did not have time to police all 107 short-term rental properties in the City.

35
36 Mr. Taylor believed the Planning Commission's decision was based on the faulty
37 recommendation of staff and he urged the Board to reverse that decision on the Wasatch
38 Boulevard property.

39
40 (19:29:51) Rob Ence spoke in support of Mr. Taylor's appeal and stated that together they had
41 worked with approximately 175 citizens. There were several reasons they had issues with the
42 short-term rental permits. What concerned all of them was the heart and soul of what was
43 intended. To the Staples, this was just a business decision, but to everyone else it was their
44 community. He stated that the applicants testified that they were in compliance but yet up to
45 today their advertisement still showed eight bedrooms with a 20-person capacity. There seemed
46 to be no good faith on the part of the Staples to try to come into compliance even after they and

1 their attorney indicated they were willing to do so. He questioned whether their intent was
2 sincere. Mr. Ence believed the ordinance had flaws and that it was inappropriately interpreted.
3 He asked that the Board uphold the fact that the interpretation should be overturned on the
4 Wasatch property.

5
6 The applicants' attorney, Mr. Barfuss, disagreed that the language in the code was clear. His
7 clients had two properties that were reviewed within three weeks of each other. The same
8 Planning Commission Member who recommended approval of the Wasatch Boulevard property
9 with the restriction of the use of four rooms used as bedrooms was the same Planning
10 Commissioner who denied the Creek Road property under the strict language of four bedrooms.
11 Mr. Barfuss argued that it was done out of pressure resulting from public clamor. A petition was
12 submitted containing over 150 signatures. He acknowledged that it was a business opportunity
13 for his clients, yet there was a need for short-term rentals within the City.

14
15 Mr. Barfuss stated that the term "bedroom" had not been defined under the City Code, however,
16 "room" was defined as a building or portion of a building arranged, occupied, or intended to be
17 occupied as living or sleeping quarters, not including toilet or cooking facilities. He believed the
18 spirit of the ordinance was to limit the number of occupants in a rental at any given time. He
19 believed that if a bed, futon, air mattress, or sleeping bag is taken out of a room it is no longer a
20 bedroom. He believed the spirit of the ordinance was complied with by limiting the use of
21 bedrooms. He stated that that was correctly interpreted by the Planning Commission in their
22 June 6 review of the Wasatch Boulevard property. Although the applicants continued to
23 advertise the home as having eight bedrooms, there was no proof offered to suggest they had
24 booked more than four bedrooms in the property. He stated that there was no proof as to
25 whether his clients failed to comply with the spirit of the law. They intended to comply, which
26 was the reason they submitted their original application. He thought there needed to be a firm
27 understanding of the ordinances to be adhered to.

28
29 (19:36:19) Mr. Barfuss commented that the staff members who brought the limitation of the
30 reformed ordinance to the attention of the Planning Commission recommended three times in
31 their planning reports that the Wasatch property be approved. He viewed that as an indication
32 that the language in 320b is not necessarily clear and unambiguous. He believed the spirit of the
33 law was not meant to eliminate any home that has more than four rooms that could be used as
34 bedrooms, but instead to limit the number of occupants. He thought to deny a property owner's
35 right to use their land as a short-term rental simply because code enforcement officers are
36 overworked was a cop out. He believed they had rights and there was a process to enforce the
37 code and protect the surrounding landowners. To simply deny it on the basis that it could be
38 abused was erroneous. Mr. Barfuss urged the Board to view the steps taken by the Planning
39 Commission in the June 6 approval of the Wasatch property as the correct approach by
40 designating bedrooms as those used as sleeping facilities so as to have beds in them. He believed
41 there were steps that could be taken to strictly enforce those rules.

42
43 Board Member Wilde thought the fact that the Staples obtained a conditional use permit for four
44 bedrooms but continued to advertise for eight indicated the extent to which they would comply
45 with the wishes of the City. Mr. Barfuss believed it could be interpreted that way. To his
46 knowledge, the Staples had not booked the property using more than four rooms. They

1 understood that their neighbors on all sides were watching their actions. He also noted that there
2 was no inspection of the Creek Road property before the denial was issued, which would indicate
3 whether there were rooms designated as bedrooms. Board Member Wilde asked Mr. Barfuss
4 why the Board should resolve a staff error in favor the Staples. Mr. Barfuss drew attention to the
5 fact that there had been no proof in the report that there were more than four bedrooms in the
6 property at the time it was reviewed. He argued that the spirit of the law was to limit the
7 occupants of any short-term rental at any given time. He thought the Planning Commission's
8 decision had more to do with the interpretation of bedrooms. Mr. Barfuss confirmed that he
9 believed that the decisions of the Planning Commission on the Creek Road and Wasatch
10 Boulevard properties were incompatible.

11
12 (19:44:16) Board Member Tyler asked Mr. Barfuss if his clients had removed beds from four of
13 the bedrooms in the home. Mr. Barfuss did not know. The property owner, Dave Staple, stated
14 that on their website the homes were no longer available. Those calling to rent them could not
15 reserve them. The website was not changed because they had not rented the properties prior to
16 tonight's hearing. If he began taking bookings, they would be sold through March or April. If
17 he did not get a permit, he did not want to have to turn away the people who were booked. Their
18 intention was to remove the beds. He invited Mr. Dolan to visit the homes weekly.

19
20 Board Member Ul-Hasan asked Mr. Staple if he was aware of the occupancy limit of two per
21 bedroom. Mr. Staple stated that there was a limit of two adults per bedroom with two related
22 children per bedroom. He was prepared to adhere to that requirement.

23
24 Board Member Good asked how many people occupied the home at any one time previously.
25 Mr. Staple estimated that most rentals consisted of 8 to 12 people. From time to time it was
26 filled to capacity.

27
28 Board Member Adinaro stated that Mr. Barfuss' interpretation of the spirit of the ordinance was
29 to limit the total number of occupants in a dwelling. He asked why then they would have
30 19.76.320b, which states that there should not be more than four bedrooms, and 19.89.120,
31 which states that there should be no more than two adults per bedroom. Mr. Barfuss believed
32 those comments supported his interpretation of the spirit of the law.

33
34 (19:48:35) Board Member Throndsen asked Mr. Barfuss to clarify his attitude toward
35 enforcement of the use of more than four bedrooms. He stated that it would seem contradictory
36 for the City to create a situation that becomes a burden on enforcement. Mr. Barfuss agreed that
37 there was a potential for abuse but thought that simply denying a property right because there is a
38 potential for abuse was wrong. He agreed that the enforcement would be burdensome, however,
39 the neighbors were a good source. He explained that the City would have the right to review a
40 short-term rental permit and can revoke it for violations.

41
42 Board Member Ul-Hasan stated that in the ordinance the violation fines were very low. She
43 thought that was important to take into account.

44
45 Mr. Taylor pointed out that Mr. Barfuss indicated that the term "bedroom" was not defined in the
46 ordinance. He pointed out that on their website, in their application, in their January 4 letter, and

1 in testimony before the Planning Commission, they had no problem determining what constitutes
2 a bedroom. He stated that Mr. Barfuss made the erroneous argument that 320b doesn't mean
3 what it says and is actually a limit on the number of occupants. He stated that 320b does not use
4 the word "occupant" and instead talks about the number of bedrooms a property shall contain.
5 19.89.120 dealt with the number of occupants.

6
7 (19:53:04) Mr. Taylor remarked that the applicants' website was amended the day after the May
8 hearing but they failed to change the eight bedroom limitation. It seemed that there was
9 absolutely no intent to comply with the ordinance in this case. It was indicated by Mr. Barfuss
10 that the applicants submitted their application to be upstanding citizens, however, they actually
11 submitted it because they were caught operating an illegal short-term rental property. A letter
12 was available in the packet to that effect.

13
14 Mr. Ence stated that the home was advertised as having eight bedrooms and accommodating up
15 to 14 adults and 6 children, all sleeping in bedrooms. The Staples' intent, to him, seemed very
16 clear. To Mr. Staples' claim that the home had not been rented out recently, Mr. Taylor was
17 informed by a neighbor that there had been renters in the home in the last 30 days.

18
19 Mr. Barfuss commented that 320b was unclear and could be interpreted to mean two different
20 things. He explained that the Staples' intent for both properties at the time their applications
21 were submitted were different than they are now. Before they were familiar with the ordinance
22 they were unsure what they needed to do to be in compliance. In January, their intentions were
23 to maximize profits and generate as much business as possible. After familiarizing themselves
24 with the ordinances, their intentions were to fully comply. With regard to the claim that the
25 Staples had had short-term renters in their homes since the time of the review of their
26 applications, Mr. Barfuss stated that they were long-term rentals, which were not required to
27 have a permit with the City. They were tenants who had a short-term lease for more than 30
28 days.

29
30 (19:58:48) It was Mr. Black's opinion that 320b was very clear. On August 21 he sent out a
31 letter to every licensee in the City stating that compliance with the four-bedroom rule was
32 mandatory. He also pointed out that neither staff nor the Planning Commission had the authority
33 to waive mandatory requirements of the Code. It was clear to him that this was a mandatory
34 section of code. He noted that the applicants indicated that both of the homes contained more
35 than four bedrooms. He stated that the January 3 and May 16 recommendations were made
36 without knowledge of 19.76.320b. That was a failure on the part of staff; however, it did not
37 make the code any less enforceable. The code was in place the entire time. On June 6 the matter
38 was brought up. Interpretation issues were discussed.

39
40 Board Member Adinero asked about the Wasatch Boulevard property and why it was originally
41 continued because of non-compliance. Mr. Black stated that there were alleged non-
42 compliances. Neighbors had complained of uncured violations. Staff looked at them and found
43 that there were complaints made and they needed additional time to investigate the matter. It
44 was determined that most of the complaints were from before the home was turned into a short-
45 term rental.

1 Board Member Throndsen asked if the staff recommendation changed once the unknown
2 regulation was discovered. Mr. Black responded that staff still recommended approval and with
3 the Planning Commission, drafted a condition that only four bedrooms could be used.

4
5 Chair Holtkamp closed the hearing portion of the meeting.

6
7 (20:03:55) Board Member Wilde confirmed that the website stated that the home was
8 unavailable. To him, the fact that the home was still on the website did not necessarily mean the
9 applicants were attempting to circumvent the ordinance. He believed the statute was clear.

10
11 Board Member Good stated that the definition of bedroom was a place where one sleeps and
12 contains a bed. He also interpreted that to mean that any place one could sleep at night could be
13 considered a bedroom. To him, the code was clear that four bedrooms were the maximum.

14
15 (20:05:42) *Board Member Wilde moved to close the proceedings on this particular aspect of*
16 *the agenda and take the matter under consideration. Board Member Ul-Hasan seconded the*
17 *motion. Vote on motion: James Holtkamp-Aye, Noor Ul-Hasan-Aye, Robert Good-Aye, James*
18 *Adinaro-Aye, Paul Throndsen-Aye, Bob Wilde-Aye, Debbie Tyler-Aye. The motion passed*
19 *unanimously.*

20
21 Chair Holtkamp's understanding was that the Board would have to meet again, discuss the
22 matter, and make a decision. Mr. Black stated that because the Board is a judicial body, they
23 would have the right to deliberate in private in a closed meeting. The actual issuance of a
24 decision would be done in a public meeting, however.

25
26 **5. Appeal of a Planning Commission Decision – David Staple, Appellant – Short-Term**
27 **Rental File #P-07-020 – 3388 E. Creek Road.**

28
29 (20:07:13) Mr. Black stated that most of the pertinent information was provided with the
30 previous item. The application was submitted on May 8, before the June 6 meeting where the
31 Wasatch Boulevard rental was approved with the condition that only four bedrooms be used.
32 The application was submitted before 320b was recognized. On June 20, the application was
33 heard by the Planning Commission at which time there was a discussion and public hearing. The
34 staff report indicated that all codes would have to be complied with. Because of 320b, the
35 Planning Commission denied the application. Mr. Black stated that it would be possible for
36 Mr. Staple to rearrange the home, disassemble some of the bedrooms, and reapply.

37
38 Mr. Barfuss thought Board Member Good's comments were interesting in that the definition of
39 bedroom could also include other rooms. By that definition, any house could be in violation. He
40 was unsure how a bedroom could be dismantled. He thought the current status of the ordinance
41 was arbitrary. He thought if a bed were removed it would no longer be a bedroom.

42
43 Mr. Staple thought the situation was embarrassing for staff and was an oversight on their part.
44 When it was discovered, they immediately agreed to comply. They first became aware of 320b
45 on June 6. Any errors in their application were an oversight and unintended.

1 Board Member Wilde asked the applicant if he believed the denial should be overturned on the
2 basis of the definition of bedroom. Mr. Barfuss stated that it should be if 320b was being strictly
3 interpreted. His other basis was on the intent of the legislation. He believed the Planning
4 Commission had the authority to add additional clarification or conditions on a property to bring
5 it into compliance to mitigate factors. He thought that could be done so that both the owner and
6 neighbors could coexist. Mr. Barfuss believed that if the Creek Road application denial was
7 upheld, the City would be obligated to revoke the licenses of all short-term rentals that have
8 more than four bedrooms.

9
10 (20:16:36) Mr. Barfuss thought the situation was fairly simple and had to do with whether the
11 Planning Commission rightfully denied the conditional use permit based upon 320b. Mr. Black
12 believed they did. He believed the ordinance was completely clear. Unfortunately, staff made a
13 mistake and the mistake had since been corrected. He referred to Mr. Barfuss' appeal and
14 reviewed his arguments.

15
16 Board Member Wilde stated that he used to live in a house with five bedrooms and he now lives
17 in a home that has four bedrooms and an office. He stated that both were the same house. He
18 asked why the applicant should not be able to move a bed out of one of the rooms and put in
19 something else. Mr. Taylor suspected the bed would go back in the minute they are pulled out.
20 If walls were being torn down and closets removed, he supposed that would be one way to
21 satisfy the four bedroom limit. At that point he thought it would become an enforcement issue.

22
23 Board Member Ul-Hasan agreed that a hide-a-bed could be put in the living room but questioned
24 whether at that point it would be considered a bedroom or a living room.

25
26 (20:29:23) Mr. Barfuss clarified his comment about 320b being ambiguous. He stated that his
27 evidence was based on the fact that the Planning Commission on June 6 reviewed the language
28 and still interpreted that the home on Wasatch Boulevard was in compliance with the ordinance.
29 He stated that the words were clear but the interpretation was not. He obtained a list of all of the
30 applications for short-term rentals in the City. Some were incomplete and some did not specify a
31 number of bedrooms. He encouraged the Board to not look to the application as an end all of
32 what the Planning Commission should or should not have ruled on. Mr. Staple reiterated his
33 intent to adhere to the code.

34
35 Mr. Taylor disagreed that the interpretation of 320b was vague. He had lived next to short-term
36 rentals before and remarked that they were "hell" to live with. He thought the Staples had shown
37 an intent to try to skirt the law.

38
39 Mr. Black stated that staff made a mistake and the Planning Commission was acting to correct
40 that mistake on June 6 with the June 20 decision. Board Member Thronsdon stated that staff's
41 recommendation, even after finding the mistake, was to grant the conditional use permit. He
42 asked about the underpinnings of that recommendation. Mr. Black recalled that the
43 recommendation was to approve the ordinance based on compliance with Chapter 19.89 and
44 19.76. He did not believe the oversight was on the ordinance or the misinterpretation of the
45 ordinance. The staff report did not state that approval should be granted with seven bedrooms.

1 Board Member Good referred back to December 2006 and stated that the designation was
2 interpreted as using no more than four bedrooms. He believed that was in direct contrast to
3 19.76.320. Mr. Black stated that from the beginning staff should have specified that there were
4 seven bedrooms. That was not disclosed until the Planning Commission Meeting.

5
6 Board Member Ul-Hasan thought that just because one thing was done incorrectly, they should
7 not continue on that path. The Board's decision would be based on the information available.

8
9 Chair Holtkamp closed the public hearing.

10
11 (20:39:18) ***Board Member Ul-Hasan moved to close the meeting for discussion and take the***
12 ***matter under advisement. Board Member Wilde seconded the motion. Vote on motion: James***
13 ***Holtkamp-Aye, Noor Ul-Hasan-Aye, Robert Good-Aye, James Adinaro-Aye, Paul Throndsen-***
14 ***Aye, Bob Wilde-Aye, Debbie Tyler-Aye. The motion passed unanimously.***

15
16 Chair Holtkamp stated that because the two matters were taken under advisement, it meant that
17 the Board had not yet made a decision. As citizens of Cottonwood Heights, the Board Members
18 should not be approached to discuss the matter. Doing so would be improper as they were acting
19 in an adjudicative capacity.

20
21 (20:47:27) City Attorney, Shane Topham, counseled the Board to conduct a closed meeting for
22 the purpose of discussing the matters addressed earlier. He could then prepare written decisions
23 for each appeal that could be circulated to the Board Members for approval via email. Changes
24 could be made with the Board later reconvening in an open meeting to issue the decisions.

25
26 (20:48:40) ***Board Member Wilde moved to continue the discussion tonight. Board Member***
27 ***Tyler seconded the motion.***

28
29 Board Member Ul-Hasan preferred to have more time as she wanted to discuss the clarity of the
30 bedroom issue. She thought that should be discussed with staff to determine what "bedroom" is
31 in a closed meeting. Mr. Black stated that there would be a definition of bedroom added to
32 Chapter 19.89. He believed that presently the City had a workable definition for bedroom.

33
34 Chair Holtkamp stated that the members of the public left with the expectation that the Board
35 would be in a closed session to decide the matter. If they now decide to do it in this public
36 meeting and they are not present, the Board may get some push back, particularly if it is sent up
37 to 3rd District Court. If it were to be done in open session it was suggested that it be renoticed. It
38 was noted that closed meetings were noticed as well. Board Member Wilde thought he would be
39 able to give a better deliberative response tonight than he would in two weeks.

40
41 (20:52:19) Chair Holtkamp asked Mr. Topham's opinion about how to proceed. Mr. Topham's
42 preference was not to have the deliberations recorded and have to prepare minutes of them. That
43 would have to take place if the deliberations were to occur in an open meeting.

44
45 ***Board Member Wilde withdrew his motion.***
46

1 It was determined that closed meetings were not open to the public. A closed meeting of the
2 Board was scheduled for September 13 at 6:00 p.m. Mr. Black stated that it would be noticed as
3 a public meeting, however, the only agenda item would be a closed session to discuss litigation.
4 Procedural issues were discussed.

5
6 **6. Election of Vice Chairperson and Executive Secretary.**
7

8 (20:43:30) Mr. Black remarked that the Board would elect the Vice Chair. The code specified
9 that the Community Development Director, or his designee, should serve as the Executive
10 Secretary. Mr. Black reported that he was the Deputy Community Development Director and
11 presumed that was under his purview. He asked that Associate Planner, Glenn Symes, be
12 appointed to serve as the Executive Secretary of the Board of Adjustment.

13
14 *Board Member Ul-Hasan nominated Bob Wilde to serve as Vice Chair.*

15
16 *Board Member Tyler nominated Paul Throndsen. Board Member Throndsen withdrew and*
17 *felt more comfortable with Board Member Wilde serving because of his procedural*
18 *experience. Board Member Wilde expressed his willingness to serve.*

19
20 *Vote on motion to appoint Board Member Wilde as Vice Chair: James Holtkamp-Aye, Noor*
21 *Ul-Hasan-Aye, Robert Good-Aye, James Adinaro-Aye, Paul Throndsen-Aye, Bob Wilde-Aye,*
22 *Debbie Tyler-Aye. The motion passed unanimously.*

23
24 *Glenn Symes was nominated to serve as Executive Secretary. Vote on motion to appoint*
25 *Mr. Symes as the Board's Executive Secretary: James Holtkamp-Aye, Noor Ul-Hasan-Aye,*
26 *Robert Good-Aye, James Adinaro-Aye, Paul Throndsen-Aye, Bob Wilde-Aye, Debbie Tyler-*
27 *Aye. The motion passed unanimously.*

28
29 **7. Adjournment.**
30

31 (20:59:58) *Board Member Wilde moved to adjourn. Board Member Throndsen seconded the*
32 *motion. Vote on motion: James Holtkamp-Aye, Noor Ul-Hasan-Aye, Robert Good-Aye, James*
33 *Adinaro-Aye, Paul Throndsen-Aye, Bob Wilde-Aye, Debbie Tyler-Aye. The motion passed*
34 *unanimously.*

35
36 The Board of Adjustment Meeting adjourned at 9:00 p.m.

1 *I hereby certify that the foregoing represents a true, accurate, and complete record of the*
2 *Cottonwood Heights City Board of Adjustment Meeting held Thursday, August 30, 2007.*

3
4
5
6
7
8 

9 Teri Forbes
10 T Forbes Group, Inc.
11 Minutes Secretary

12
13
14 Minutes approved: 10-18-2007 sm